

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4986 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BALWANTBHAI N PATEL

Versus

GOPALDAS MOHANDAS PRAJAPATI

Appearance:

MR BG JANI for Petitioner
DS AFF.NOT FILED (N) for Respondent No. 1
MS AVANI S MEHTA for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 09/08/1999

ORAL JUDGEMENT

Admit.

Ms Avni Mehta, learned Advocate waives service of notice of admission on behalf of the respondents. By consent of the learned Advocates for the parties, the appeal is finally heard and disposed of today.

2. The appellant, who is the original claimant, a victim of a vehicular accident, has filed this appeal under section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') for enhancement of compensation by challenging the judgment and award of the Motor Accident Claims Tribunal, (Auxillary), Court No.5, Ahmedabad in MAC Petition No.178/87 (III), by which the appellant was awarded a total amount of compensation of Rs.42,700/with costs and interest at 12% to be recovered from the respondents.

3. Learned Advocate for the appellant has produced necessary documentary evidences on the record and hence, Record and Proceedings was not called for from the tribunal.

4. On 11.10.1986, the applicant was proceeding along with his friend on a scooter to reach his residence. When the scooter reached near Keshavbaug society, one auto rickshaw bearing No.GRS 4316 which was coming from the opposite direction collided with the scooter driven by the friend of the applicant. As a result of the aforesaid accident, the appellant sustained fracture of fibula on his right leg due to rash and negligent driving by the driver of Auto rickshaw. The appellant was hospitalised for 16 days and thereafter he took treatment as an outdoor patient. The appellant thereafter filed MAC Petition No.178/87 claiming compensation of Rs.75,000/- to be recovered from the respondent with running interest at the rate of 12% from the date of the application till realization.

5. The applicant, before the trial court, produced documentary evidence in support of his claim of Rs. 75,000/-. The applicant also examined Dr Patel, who had treated him for the fracture on the right leg. Dr. Patel issued disability certificate to show that due to fracture on the right leg, the applicant had permanent disability of 16.8% considered body as a whole.

6. Considering the oral evidence the tribunal came to the conclusion that the driver of the auto rickshaw was rash and negligent in driving and he was solely responsible for the accident. The tribunal awarded compensation of Rs.10,000/- under the head of pain, shock and sufferings. The tribunal further awarded a sum of Rs.21,600/- under the head of future loss of income taking into consideration the permanent disabilities suffered by the appellant. The tribunal also awarded Rs.5000/- for the disfigurement of his right leg and

Rs.2500/- for medical expenses. The tribunal in all awarded a sum of Rs.42,700/- to the appellant along with cost and interest, which has given rise to the filing of this appeal.

7. Heard the learned Advocates for the appellant and the respondents. The appellant, after sustaining injuries on his right leg, remained as an indoor patient in the hospital for 16 days. Thereafter he had taken follow-up treatment. Looking to the period of hospitalisation and the follow-up treatment, in my opinion, the compensation awarded under the head of pain, shock and sufferings of the amount of Rs.10,000/- requires to be enhanced to Rs.12,500/-. The award of the tribunal, is therefore, required to be enhanced to that extent.

8. The appellant, at the time of accident was 32 years old and the accidental injuries have left impairment on his right leg. Bearing in mind the age of the applicant, the tribunal erred in applying multiplier of 12 years. In my opinion, the proper multiplier to be applied in the facts and circumstances of the case would be 15. The assessment of the tribunal with regard to the future economic loss of income of Rs.1800/- per year is just and proper and hence it is not disturbed. However, if multiplier of 15 is applied to the datum figure of Rs. 1800/- the appellant would be entitled to Rs. 27,000/under the head of future economic loss of income instead of Rs.21,600/-. The compensation awarded by the tribunal under the head of expenses of medicine, disfigurement etc. is not disturbed and is hereby confirmed.

9. As a result of the foregoing discussion, the appellant would be entitled to the following additional amount of compensation for the accidental injuries caused in the vehicular accident :

Rs. 2500/- Pain, shock and sufferings
Rs. 5400/- Future economic loss of income

Rs. 7900/-
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In view of the above, the appeal is partly allowed. The award of the tribunal is modified and enhanced to the extent that the applicant would be entitled to receive compensation of Rs.50,600/- instead of Rs.42,700/- with proportionate costs and interest at the rate of 12% from the date of filing of the petition till realization to be

recovered from the respondents jointly and severally. The respondent Insurance Company shall deposit an additional amount of compensation with costs and interest within a period of four weeks from the date of receipt of the order. There shall be no order as to costs. Direct Service is permitted.

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msp.